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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,192	04/05/2001	Robert Lee Popp	15583	5376

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EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 06/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/827,192

Applicant(s)

POPP ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 19-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-18, drawn to a method of making a prefastened and refastenable pant, classified in class 156, subclass 85.
 - II. Claims 19-28, drawn to an apparatus for making a prefastened and refastenable pant, classified in class 156, subclass 499.
 - III. Claims 29-35, drawn to a disposable pant, classified in class 2, subclass 401.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process can be practiced by another and materially different apparatus such as one which employed a common folding and engaging component for the attachment of the fastener components together subsequent to the folding operation. Additionally, one would have readily understood that the device used to make the undergarment could be used in a materially different process such as one wherein the side seams were welded together in the engaging means.
3. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product could be manufactured in a materially different process such as one which utilized

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retractive material which was not activatable but rather was elastic and applied in a stretched state and immediately retracted.

4. Inventions II and III are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product could be manufactured by another and materially different apparatus such as one which applied elastic in a stretched state and allowed the same to retract immediately without an activation of the same.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Thomas Gage on 5-27-03 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-35 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3, 6-10 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elsberg et al in view of Jessup.

Elsberg suggested that it was known at the time the invention was made to make a refastenable underpant which included the steps of providing discrete articles which included first and second waist regions and a crotch region wherein the discrete articles were folded about the crotch region with a conventional blade folder 90 which folded the article along the crotch region 26 thereof. The reference additionally suggested that subsequent to the folding at the crotch region the undergarment side panels were folded with a folding board arrangement 100 where the fasteners 62 were folded over. The arrangement as depicted in Figures 1 and 2 taught the folding of the crotch region of the discrete article followed by folding of the side panels which included the fastener components and subsequently engaging the fastening components of the undergarment together by passing the assembly through a pair of nip rollers, see column 7, lines 15-32. The reference failed to make mention of the use of a retractable material in the waist region which was retracted subsequent to activation of the retractable material. The reference did

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suggest that normal manufacturing materials would have been utilized in the disposable undergarment.

Jessup suggested that those skilled in the art at the time the invention was made would have formed discrete articles as undergarments by folding over the discrete article in the crotch region, sealing the side edges and subsequently retracting the retractable material with the application of heat in order to shrink the same to provide for an elasticized waist region in the disposable absorbent article. Applicant is more specifically referred to steps 146, 148, and 150 of Jessup and the associated description of the same. The use of retractable material in Jessup was to provide a material which was capable of providing an elastic zone when desired in the finished assembly via the activation but which remained inactive (or unretracted) until such time in the process where it was desirous to activate the same (note that elastics in a contracted state after bonding would have presented problems relating to the manufacture of the assembly in that sometime the material would be misaligned in the process line which operated at high speeds). Additionally note that Jessup provided for the elastic in the waist region of the undergarment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the elastic waist materials of Jessup in the process of Elsberg et al where the elastics were retracted with the application of heat subsequent to the assembly of the article.

With regard to the dependent claims, the applicant is advised that those skilled in the art at the time the invention was made would have applied the heat to retract the elastics of Jessup. Additionally regarding those claims relating to the amount of retract, one skilled in the art would have determined the amount of retraction as a function of the desired fit for the final assembly and such would have been determined through routine experimentation. Regarding those claims

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which recite the retaining of the retractable material in a compressed state, note that the retractable materials of Jessup were in fact in a stressed condition and that the application of heat released such stresses. The compression of a retractable material is taken as conventional in the art of such retractable materials and it would have been within the purview of the ordinary artisan to employ such known retractable materials (as such would have been viewed as a functionally equivalent alternate expedient for the use of heat shrinkable materials). Note that the order of the operation is immaterial in that Elsberg provided temporary side seams which were releasable and the side seams were formed prior to the attachment of the releasable fasteners in Elsberg, see temporary welds 64. Thus, one skilled in the art would have understood that the processing according to Elsberg would have included controlling the position of the side panels (with the temporary bonding) and it would have been obvious to those skilled in the art to shrink the elastic either before or after the folding and attachment of the mechanical fasteners as such would have been viewed as alternative processing.

11. Claims 2, 4-5, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 10 further taken with either one of Roland et al or Thorson et al.

The references as set forth above in paragraph 10 suggested that those skilled in the art at the time the invention was made would have incorporated a heat shrinkable material in the disposable absorbent article, however the shrinkable material was retracted as a function of the heat applied to the same. The references do not suggest the use of electromagnetic radiation application to the elastic material to heat the same and consequently shrink the same. The reference to Roland suggested that as an alternative to application of heat to shrink the elastics

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those skilled in the art at the time the invention was made would have applied infrared radiation to the elastics to shrink the same along with the application of heated air directed on the elastics located in the waist region of the disposable absorbent articles, see column 2, lines 52-column 3, line 7 and the abstract of the disclosure for example. The reference to Thorson et al suggested that those skilled in the art at the time the invention was made would have understood to utilize electromagnetic radiation to shrink the elastics in the processing and that by controlling the radiation emitted one skilled in the art would have been capable of better controlling the application of heat during the processing, see column 1, lines 36-60, column 2, lines 6-21. It should be noted that in each of Roland and Thorson the radiation and heated air was directed at the waist region of the absorbent article as the absorbent articles included waist elastics which needed to be activated. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a radiant heating mechanism which included electromagnetic radiation as well as heated air for activating the heat shrinkable elastics of the undergarments as set forth above in paragraph 10 as such would have been viewed as a functionally equivalent alternate expedient for heating the heat shrinkable materials in a disposable undergarment.

With regard to claims 4 and 5, note that the references suggested the application of the heated air onto the waist portions of the undergarments and additionally the control of the heated air to apply more to the waist portions than the hip portions of the same.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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13. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 4 and 5, the applicant refers to the use of "heated air" or "air flow" however there is no antecedent basis for the application of heated air or flowing air relative to the use of heat to shrink the elastics in the undergarments. Applicant is advised to amend claim 3 to recite that the heat is a heated airflow.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kling suggested that it was known to attach refastenable fasteners in the manufacture of an undergarment. Herrmann suggested that it was known at the time the invention was made to maintain tension in the folding and sealing manufacture of undergarments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

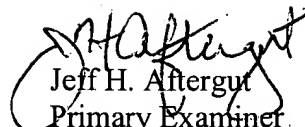
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Jeff H. Aftergut
Primary Examiner
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JHA
June 2, 2003
